

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

WILLIAM JOSEPH SUMMERVILLE, §
§
Petitioner, §
§
v. § Civil Action No. 3:22-cv-02150-L-BT
§
BRYAN COLLIER and BOBBY §
LUMPKIN, §
Respondents. §

ORDER

The Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 33) was entered on December 6, 2023, recommending that the court construe Petitioner William J. Summerville’s (“Petitioner”) notice of withdrawal letter (“Letter”) (Doc. 32), filed August 10, 2023, as a motion for voluntarily dismiss under Fed. R. Civ. P. 41(a)(2), grant the motion, and dismiss this action without prejudice. Doc. 33 at 1.

On September 27, 2022, Petitioner applied for federal habeas relief pursuant to 28 U.S.C. § 2254. Doc. 3. On July 18, 2023, the State responded, arguing that his claims are time barred, procedurally defaulted, and substantively meritless. Doc. 26 at 9-22. Petitioner did not reply to the State’s response; instead, he filed his Letter informing the court that he is “withdrawing his Petition” because he was “informed that [he has] not exhausted [his] state appeals.” Doc. 32 at 1. The magistrate judge construed the Letter as a motion for voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2) and recommended that the court grant the motion. Doc. 33 at 1, 4. Petitioner did not file objections to the Report, and the time to do so has passed.

Having considered Petitioner’s Letter, Report, file, and record in this case, the court determines that the magistrate judge’s finding and conclusions in the Report are correct and

accepts them as those of the court. Accordingly, the court **construes** Petitioner's Letter as a motion for voluntary dismissal, **grants** the motion, and **dismisses without prejudice** his petition pursuant to Federal Rule of Civil Procedure 41(a)(2).

It is so ordered this 29th day of December, 2023.



Sam A. Lindsay
United States District Judge